

Date of decision:1-5-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S. K. KESHOTE,J
(1-5-1996)

Mr. Arvind Supehia for Mr. I.S. Supehia for the petitioner.
Ms. Sejal Mandavia for the respondents.

ORAL JUDGMENT:

Heard the learned counsel for the parties.

It is not in dispute that the petitioner was promoted to the post of Carpenter Grade I under order dated 24th May, 1985. This order of promotion of the petitioner also came to be published in the Ahmedabad City Police Gazette dated 25th July, 1985. When the petitioner was promoted to the post of Carpenter Grade I he was working under respondent No.2 as Carpenter Grade II. He was ordered to be posted on promotion at Gandhinagar. The petitioner approached respondent No.2 for relieving him from the post of Carpenter Grade II so as to enable him to resume his duties as Carpenter Grade I at Gandhinagar. The petitioner was not relieved and he continued to work as Carpenter Grade II. He made representations on 12th August, 1985, 12th September, 1985, 29th November, 1985 and on 5th December, 1985, but nothing has been done. The petitioner was orally conveyed that there was no substitute available to be posted in place of the petitioner and therefore he could not be relieved, and as and when substitute was made available the petitioner will be relieved.

2. It is not in dispute that after filing of this writ petition the petitioner has been relieved vide order dated 5-4-1986 to proceed to join the post of Carpenter Grade I, and the petitioner has already joined the post. The respondents have come up with the case that the petitioner has not suffered any loss because of the delay in relieving him. He has been given seniority not from the date of joining but the date of his promotion will be treated for the purposes of seniority. I do not find any justification in the defence of the respondents. Once the petitioner has been promoted, he is entitled to the benefits of promotional post. In case the petitioner could not be relieved from the post of Carpenter Grade II for the reason that substitute was not available, then he should have been given promotional benefits from the said date and should have been allowed to continue in the office of respondent No.2. But merely because substitute was not available, how the petitioner could be denied the benefits of promotion? It is true that the petitioner has been given seniority. But that is not the only benefit of promotion. There are further benefits like salary in the higher pay-scale and also increments in the higher pay-scale. For a low paid employee like the petitioner, the benefits of the higher post of Carpenter Grade I would have been substantial. Denial of this benefit to the petitioner without there being any fault on his part may result in loss for him for all time to come, including pension and other retirement benefits. There is no justification in the action of the respondents in not relieving the petitioner, or, if it was not possible to relieve him, in not giving him the pecuniary benefits of the promotional post from the date of promotion. It is a case

where serious prejudice has been caused to the petitioner because of the inaction or omission on the part of the respondents.

3. In the result this writ petition is allowed. The respondents are directed to give the petitioner all benefits of the post of Carpenter Grade I from the date of order of his promotion till the date he joined that post at Gandhinagar. Necessary calculation of arrears of the amount to be paid to the petitioner shall be made within a period of three months from the date of receipt of certified copy of this judgment, and the payment of the amount shall be made within one month thereafter. However, while calculating the arrears payable to the petitioner, the amount already paid to him, if any, for the aforesaid period towards salary and allowances shall be deducted, and only the difference shall be paid to him. The petitioner will be entitled to grade increments as well as benefits of revision of pay-scale from the date of his promotion. Rule made absolute in the aforesaid terms. No order as to costs.

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